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## OLR Bill Analysis

sHB 5795 (as amended by House "A" and "B")\*

***AN ACT CONCERNING THE LICENSING AND RECORD KEEPING OF PAWNBROKERS, SECONDHAND DEALERS AND PRECIOUS METALS OR STONES DEALERS, THE RETENTION OF CERTAIN GOODS AND CERTAIN FEES CHARGED BY PAWNBROKERS.***

**SUMMARY:**

This bill makes numerous changes in the statutes governing pawnbrokers and dealers in precious metals and stones. It also creates a secondhand dealer license (that has substantially similar requirements as for pawnbrokers) and specifies what a junk dealer's secondhand articles are.

The bill creates additional requirements on pawnbrokers for (1) license applications, (2) record-keeping, (3) payment, (4) reports, and (5) property sales. It also adds additional penalties and requires precious metals and stones dealers to maintain a business place in Connecticut.

The bill makes the licensing authority the same for pawnbrokers, secondhand dealers, and precious metals and stones dealers. It also defines these occupations and other related terms and makes numerous minor, technical, and conforming changes.

\*House Amendment "A" amends the secondhand dealer definition by adding the word "primarily" to specify the dealer is primarily engaged in the business of purchasing property from someone who is not a wholesaler.

\*House Amendment "B" (1) amends the secondhand dealer definition to exclude retailers that sell new items but give consideration other than cash for traded items and (2) makes a technical change.

EFFECTIVE DATE: October 1, 2011

## **LICENSING AUTHORITY**

The bill makes the licensing authority the same for pawnbrokers, precious metals and stones dealers, and secondhand dealers. The bill makes the licensing authority the police chief, and for any city or town that does not have an organized local police department, the public safety commissioner. Currently, the licensing authority for pawnbrokers and precious metals and stones dealers is a town's selectmen or a city's police chief.

## **PAWNBROKER**

### ***License***

The bill allows the licensing authority to suspend, not just revoke, a pawnbroker's license for cause. It specifies "cause" to include failing to comply with any licensing requirements specified at the time of issuance.

***License Fee and Bond Requirements.*** It allows the public safety commissioner to collect the \$50 licensing fee and \$25 renewal fee if he is the licensing authority. It exempts pawnbrokers who are also secondhand dealers from renewal fees and bond requirements. The law requires pawnbrokers to file with the licensing authority a bond with a competent surety in the penal sum of \$2,000.

The bill requires pawnbrokers to display the license in a conspicuous location at their business place. When applying for, or renewing a license, the applicant must disclose all the places where he or she used or intends to use to buy, receive, store, or sell property. During the term of the license, the licensee must notify the licensing authority of any additional places prior to such use.

***Applications.*** The bill specifies that license applications must be in writing, under oath, and contain:

1. the type of business to be engaged in;
2. the applicant's full name, age, and date and place of birth;

3. the applicant's home addresses and places of employment for the preceding five years;
4. the applicant's present occupation;
5. any criminal conviction, including the date and place; and
6. any additional information the licensing authority needs to investigate the applicant's qualifications, character, competency, and integrity.

The application of a corporation, limited liability company, partnership, or association must contain the information required for each individual who is or will be an officer, shareholder, financial backer, or creditor, other than a financial institution.

The application and any renewal application must also include information on any Internet website or account used to conduct the business. The licensee, during the license term, must notify the licensing authority in writing when it adds or discontinues any Internet website or account.

**Background Checks.** The bill allows the licensing authority to require any applicant, employee, or person with ownership interest to submit to a state and national criminal history check. Current law allows the licensing authority to require criminal history checks only on the applicant. The bill requires that whenever a criminal history check is required, the individual must submit two fingerprint sets. The bill also allows the licensing authority to charge a fee equal to the fees established by the FBI and the State Police Bureau of Identification for performing criminal history records checks.

**License Approval.** The licensing authority must grant or deny an application within 90 days after it is filed. The licensee must file for renewal at least 60 days before the license expires. The licensing authority must grant or deny the renewal within 30 days of the filing. If the licensing authority does not act within the specified time, it will be deemed as a denial. The licensing authority may suspend, revoke,

or modify any license at any time during the license period for good cause, upon notice and followed by a hearing. The licensing authority must hold a hearing within five days of the notice being issued and decide within 14 days after the hearing. A person may appeal to the Superior Court a denial, suspension, revocation modification, or refusal to renew a license.

### ***Record-keeping***

***Identification.*** The law requires pawnbrokers to receive proof of identity from a person depositing, pledging, or selling property. The identification must include a photograph and address, and if available on the identification, an identifying number. The bill adds date of birth. The bill changes the penalty for first time offenders who willfully violate this section, from an infraction to a class A misdemeanor, which is punishable by up to a year in prison or a fine of up to \$2,000, or both. The bill also prohibits pawnbrokers from transacting business with a minor unless the minor is accompanied by a parent or guardian.

***Record-Keeping system.*** The bill requires pawnbrokers to maintain a computerized record-keeping system that the licensing authority deems appropriate. The law currently requires an approved record-keeping system, but it does not have to be computerized. The bill requires a digital photograph of property that does not have any identifiable numbers or markings. It also requires every entry in the record-keeping system to be consecutively numbered. A tag must be attached to the article in a visible and convenient place with a number corresponding to the entry number in the record-keeping system. The tag must remain attached to the article until it is sold or disposed of. The tag must be visible in the digital photograph. The licensing authority must establish procedures authorizing the removal of the tags, including for jewelry that is cleaned and repaired on the premises. The records must be maintained for at least two years.

The pawnbroker's description of any property received must include (1) all distinguishing marks; (2) names of any kind; (3) brand and model names; (4) model and serial numbers; (5) engraving; (6)

etchings; (7) affiliation with any institution or organization; (8) dates; (9) initials; (10) color; and (11) vintage, or image represented. Any description of audio, video, or electronic media must include the title and artist or other identifying information from its cover. The licensing authority may exempt or establish additional or different requirements depending on the nature of the property, transaction, or business, including articles in bulk lots or with minimal value.

### ***Memorandum or Note***

The law requires pawnbrokers to give the person who deposits, pledges, or sells his or her property a memorandum or note with the entry from the record-keeping system. This bill requires that the memorandum or note also include a copy of a statement signed by the person stating he or she is the rightful owner of the property with the right to enter into the transaction, and that the property is not stolen and does not have any liens or encumbrances against it. The note must also state that the person will indemnify and hold harmless the pawnbroker for any loss arising from the transaction because of a superior right of possession to the property residing with someone else. Pawnbrokers may charge the person a fee for costs associated with the transaction.

### ***Payment***

The bill requires any check, draft, or money order to contain numbers associated with the property in the record-keeping system. The pawnbroker must keep the electronic copy of any check payment, which is subject to inspection as part of the record-keeping system.

The law requires pawnbrokers to make payments only by check, draft, or money order; never by cash. However, a pawnbroker can cash a check, draft, or money order he or she issues to a person. The bill prohibits pawnbrokers from cashing any check, draft, or money order over \$1,000 and prohibits a person from structuring his or her transactions to avoid it. Any transaction between a pawnbroker and the same party within a 24-hour period will be aggregated and considered a single transaction for this purpose.

### ***Weekly Report***

The law requires pawnbrokers to electronically submit weekly sworn statements of their transactions to the licensing authority. It allows the licensing authority to require more frequent reports and to grant exemptions for electronic filing for good cause.

The bill increases the penalty for willfully failing to file a report from a fine of up to \$100 to a class A misdemeanor, punishable by up to a \$2,000 fine, up to one year in jail, or both.

### ***Sale of Pledged Property***

The law requires pawnbrokers to keep personal property left with them for two months. The bill changes the time period to 60 days. It also specifies that if the property is not redeemed within 60 days the pawnbroker acquires the entire interest in the property without further notice to the person.

The bill also eliminates the requirement that pawnbrokers place an advertisement in the local newspaper at least two days before selling items.

### ***Seizure of Property by Law Enforcement Officers***

The law requires a law enforcement officer, when seizing property from a pawnshop, to give the pawnbroker a duly signed receipt for the seized property containing:

1. a case number,
2. a description of the property,
3. the reason for the seizure,
4. the name and address of the officer,
5. the name and address of the person claiming a right to the property other than the pawnbroker, and
6. the pawnbroker's name.

If the pawnbroker claims ownership interest in the property, he or she may request its return by filing a request with the law enforcement agency in accordance with the seized property procedures. The bill applies these property seizure requirements to precious metals and stones dealers and secondhand dealers. It also allows the court to order restitution if the person who deposited the property is convicted of an offense arising out of the licensee's acquisition of the property and the licensee suffered an economic loss as a result.

### ***Penalties***

Currently, anyone who engages in the pawnbroker business without a license (1) is guilty of a class D felony, which is punishable by one to five years in prison, a fine of up to \$ 5,000, or both, and (2) forfeits triple the amount loaned on the pledged property to any person who is injured and then sues.

The bill requires that an individual act willfully to be guilty of engaging in the pawnbroker business without a license and eliminates the triple damages provision.

## **SECONDHAND DEALER**

### ***Definition***

A "secondhand dealer" is anyone primarily engaged in the business of purchasing personal property from a person who is not a wholesaler, for the purpose of reselling or exchanging the property, and has physical possession of the property.

Secondhand dealers do not include antiques dealers, art dealers, coin and stamp dealers, precious metals or stones dealers, pawnbrokers, consignment shop operators, special collectibles dealers, musical instrument dealers, used book dealers, dealers in motor vehicles, auctioneers, junk dealers, scrap metal processors, recycling facilities, bona fide charitable or religious corporations, and retailers that sell new items but give consideration other than cash for traded items.

### ***License***

The bill creates a secondhand dealer license, which is substantially similar to the pawnbroker license. The licensing authority may grant secondhand dealer licenses to any suitable person with a fixed place of business within the town or city limits. This does not apply to transactions involving the purchase of personal property from a person who is not a wholesaler for the purpose of resale or exchange by a (1) charitable or religious corporation or (2) person conducting garage, yard, tag, or estate sales if they are conducted entirely at a private residence and do not last longer than 72 hours during any six-month period.

The bill requires a secondhand dealer to pay a licensing fee of \$250 and an annual \$150 renewal fee. The secondhand dealer must also file a \$10,000 performance bond with the city or town, with competent surety, to be approved by the licensing authority.

It requires the license to (1) designate the place where the business is located and (2) be displayed in a conspicuous location in the place of business. At the time of application or renewal, the applicant must disclose all places used or intended to be used for the purchase, receipt, storage, or sale of property. During the term of the license, the licensee must notify the licensing authority of any additional places prior to such use.

An application for a secondhand license must be made in writing and under oath. It must include:

1. the type of business to be engaged in;
2. the applicant's full name, age, and date and place of birth;
3. the applicant's home addresses and places of employment for the preceding five years;
4. the applicant's present occupation;
5. any criminal conviction and the date and place of the conviction; and



6. any additional information the licensing authority feels is necessary to investigate the applicant's qualifications, character, competency, and integrity.

If the applicant is a corporation, limited liability company, partnership, or association, the application must contain the information required for each individual who is or will be an officer, shareholder, financial backer, or creditor, other than a financial institution.

The license application or renewal must include information on any Internet website or account used to conduct the business. The licensee, during the term of the license, must notify the licensing authority in writing when it adds or discontinues any Internet website or account.

The bill prohibits convicted felons from obtaining a license and allows the licensing authority to require any applicant, employee, or person with ownership interest to submit to a state and national criminal history check. Under the bill, the criminal history check, license and renewal application, and hearing and appeal requirements are the same as for pawnbrokers.

Anyone can apply for an exemption from the term of the license or for a shorter period as the licensing authority may determine for good cause. Also for good cause, the licensing authority may exempt an individual from the licensing requirements.

Anyone who willfully engages in the business of a secondhand dealer without a license is guilty of a class D felony.

### ***Record-keeping***

The bill requires secondhand dealers to receive proof of identity before buying property from any person, unless he is a wholesaler. The identification must include a photograph; an address, if available on the identification; an identifying number; and date of birth.

It also requires the secondhand dealer to maintain a record-keeping system deemed appropriate by the licensing authority, which must be

entered in English at the time of purchase. It must also include a description of the article and the name, the home address, the proof of identity, and a general description of the person, and the date and hour when the property was purchased. If the property does not contain any identifiable numbers or markings, a digital photograph must be included. It also requires every entry in the record-keeping system to be consecutively numbered.

A tag must be attached to the article in a visible and convenient place with a number on the tag corresponding to the entry number in the record-keeping system. The tag must remain attached to the article until it is sold or disposed of and be visible in the digital photograph. The licensing authority must establish procedures authorizing the removal of the tags. The state police or municipal police officer may, at any time, examine the record-keeping system and the place where business is carried on, including all articles within the property. Law enforcement officers may require any employee on the premises to provide proof of identity. The records must be maintained for at least two years.

The secondhand dealer's description of any property received must include the same information required of pawnbrokers.

The licensing authority may exempt or establish additional or different requirements depending on the nature of the property, including articles in bulk lots or with minimal value.

### ***Payment***

The bill prohibits secondhand dealers from paying for property with cash; it allows payment only by check or money order. The secondhand dealer must also, when paying by check, retain the electronic copy or other record issued by the financial institution, which is subject to police inspection.

It prohibits a secondhand dealer from paying cash or cashing any instrument that he or she issued. The dealer must indicate on the instrument the number or numbers associated with the property in the

record-keeping system.

The bill allows a secondhand dealer who was licensed as a pawnbroker as of March 31, 2011 and who continues to hold such license to pay for property received under the pawnbroker statutes until July 1, 2021.

No secondhand dealer may buy property from a minor not accompanied by a parent or guardian.

### ***Weekly Report***

Each secondhand dealer must report to the licensing authority at least weekly, as determined by the licensing authority. The report is a sworn statement of transactions describing the property purchased. This may include the nature and terms of the transaction, the name and home address, and description of the person from whom the property was received. The report must be in an electronic format, unless good cause is shown.

### ***Sale of Property***

No secondhand dealer can sell property within 10 days of receipt. If the property is sold outside of the retail place of business, the secondhand dealer must include a record of the sale in the record-keeping system.

The procedures for a law enforcement officer seizing property are the same as for pawnbrokers.

### ***Penalties***

Any person who violates these secondhand dealer requirements is guilty of a class A misdemeanor.

### ***Definitions of Excluded Dealers***

The bill adds the following definitions to the statutes regarding pawnbrokers and precious metals and stones dealers.

An “antiques dealer” is anyone primarily engaged in the business of buying and selling items collected or desirable due to age, rarity,

condition, or some other unique feature.

An “art dealer” is anyone primarily engaged in the business of buying or selling illustrative and decorative paintings, drawings, photographs, prints, sculptures, or other works in the graphic or plastic arts, or decorative or artistic objects.

A “coin and stamp dealer” is anyone primarily engaged in the business of buying and selling coins, stamps, currency or rare documents collected or desirable due to age, rarity, condition, or some other unique feature.

A "consignment shop operator" is anyone primarily engaged in the business of selling personal property as the agent of another who has placed such property in the physical possession of the agent. When the other person has not been paid for such property, the consignment shop operator retains legal title to the property and bears the risk of loss until such property is sold to a third person.

A “special collectibles dealer” is anyone primarily engaged in the business of buying or selling a distinctive type of manufactured item of limited supply designed for collection or possesses attractive characteristics, rarity, uniqueness, production faults, or other distinctive characteristics necessary for a person to save it for hobby, display or investment purposes, without regard to its value or practical use. This may include china, glass, toys, militaria, sports memorabilia, movie memorabilia, railroad memorabilia, models, comic books, dolls, figurines, or other items of interest. It does not include antiques, coins, stamps, works of art, books, jewelry or precious metals.

A "musical instruments dealer" is anyone primarily engaged in the business of buying and selling new and used musical instruments and accessories.

An "used book dealer" is anyone primarily engaged in the business of buying and selling books previously sold at retail other than from a publisher or wholesaler.

## **PRECIOUS METALS AND STONES DEALERS**

The bill adds bullions to the list of items a metals dealer may sell.

It makes willfully engaging in precious metals and stones dealing without a license a class D felony.

It also requires licensees to maintain a Connecticut business place, where the goods purchased and records are to be available for inspection.

The bill (1) eliminates the option of paying for property by a draft, (2) makes paying cash or cashing checks or money orders a class A misdemeanor, and (3) prohibits licensees from advertising that they will pay for property with cash; violators can be fined up to \$1,000.

## **JUNK DEALERS**

The bill defines a "junk dealer" as someone who deals in secondhand articles that are no longer serviceable for their original manufactured purpose.

It makes willfully engaging in the junk dealer business without being properly licensed a class D felony.

## **COMMITTEE ACTION**

Public Safety and Security Committee

Joint Favorable Substitute Change of Reference

Yea 23 Nay 0 (03/15/2011)

Judiciary Committee

Joint Favorable

Yea 45 Nay 0 (04/14/2011)

Planning and Development Committee

Joint Favorable

Yea 14 Nay 2 (05/16/2011)